THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
and
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No. 23531 of 2007

O R D E R: (Per the Hon'ble Smt. Justice T. Meena Kumari)

This writ petition is filed against the order dated 7.8.2007 passed by the A.P. Administrative Tribunal in O.A. No. 4145 of 2006.

The petitioner filed O.A. 4145 of 2006 challenging para 4 of the Notification dated 29.5.2006 issued by the 1st respondent extending the Ex-Servicemen quota only to the pensioners as illegal and arbitrary and to direct the respondents to allow the applicant for the recruitment process pursuant to the impugned notification. Holding that the petitioner is not an Ex-Serviceman as he was still in service, the Tribunal dismissed the O.A. filed by the petitioner. Against the said order of dismissal, the petitioner filed this writ petition.

Learned counsel for the petitioner tried to emphasize on the definition of Ex-Servicemen as contained in the Explanation to Rule 2(16) of the A.P. State and Subordinate Service Rules, 1996. But, however, in the Notification it has been clearly mentioned by the recruiting agency that one should be a pensioner and there is no material placed before this Court or before the Tribunal that the petitioner was a pensioner as on that date and in the absence of such material, it has to be observed that the petitioner has no right of whatsoever to question the conditions of the Notification. Even otherwise, it is for the Recruiting Agency to lay down the

conditions while issuing a notification, as per the law.

It is also contended by the learned counsel for the petitioner that as per the Explanation to Rule 2(16) of the A.P. State and Subordinate Service Rules, 1996 the persons serving in armed forces of the Union, who on retirement from service, would come under the category of ex-servicemen, are entitled to apply for re-employment and therefore the petitioner is entitled to be considered under Ex-Servicemen quota, but the Tribunal has not considered the said aspect of the matter and erred in dismissing the O.A. However, as rightly pointed out by the learned Government Pleader, the Notification was issued on 29.5.2006 and the petitioner retired from service on 31.10.2007. Therefore, even assuming that the case of the petitioner would fall under the Explanation to Rule 2(16) of the Rules, the said Rule specifically states that the persons serving in armed forces of the Union, who on retirement from service would come under the category of ex-servicemen, may be permitted to apply for reemployment one year before the completion of the specified terms of engagement. In this case, the petitioner has not fulfilled the said condition. It is argued by the learned counsel for the petitioner that the said condition contained in Rule 2(16) of the Rules is contrary to the Rules. But, that is not pleaded either before the Tribunal or in the writ affidavit filed in support of the writ petition and for the first time the said question has been raised before this Court, which cannot be entertained.

Having regard to the facts and circumstances as stated above, we do not find any error or legal infirmity in the order passed by the Tribunal warranting interference of this Court.

There are no merits in this writ petition. It is accordingly dismissed.

T. MEENA

KUMARI, J.

G. CHANDRAIAH, J.

Date: 06-11-2007.

MVB.